

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID SILBERSTEIN,

Plaintiff,

Civil Action No.
07 CV

-against-

BEST BUY CO., INC.,

Defendant-Petitioner.

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NOTICE OF REMOVAL

New York County
Index No.: 105629/07

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK:**

Defendant-Petitioner, BEST BUY STORES, L.P. s/h/a BEST BUY CO., INC. ("Petitioner"), by its attorneys, SIMMONS, JANNACE & STAGG, L.L.P., SAL F. DeLUCA, ESQ., of counsel, upon information and belief, respectfully petitions the Court, pursuant to 28 U.S.C. § 1441, as follows:

1. On or about May, 2007, the above-captioned civil action was commenced and is now pending in the Supreme Court of the State of New York, County of New York. A trial has not yet been had therein. A copy of the Summons and Complaint is annexed as Exhibit A. Petitioner has not yet served an answer to Plaintiff's Complaint.

2. The action seeks monetary damages for injuries allegedly suffered by plaintiff, DAVID SILBERSTEIN, allegedly as the result of DAVID SILBERSTEIN being present outside of

Petitioner's store. The plaintiff's complaint sounds in negligence.

3. The action involves a controversy between citizens of different states, in that: (a) Plaintiff is a citizen of the State of New York; and (b) Petitioner is now, and was at the time the action was commenced, a Delaware Limited Partnership with its principal place of business in the State of Minnesota. Petitioner's General Partner and Limited Partner are not citizens of the State of New York. Furthermore, their principal places of business are not located in the State of New York.

4. This action is one of which the District Courts of the United States have original jurisdiction pursuant to 28 U.S.C. § 1332. There is complete diversity between Petitioner and Plaintiff. Additionally, the amount in controversy exceeds \$75,000.

5. This Notice of Removal is being filed within thirty (30) days after receipt of plaintiff's complaint and a confirmation that the amount in controversy exceeds \$75,000.

6. Written notice of the filing of this Notice of Removal will be given to plaintiff promptly after the filing of this Notice.

7. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Court of the Supreme Court of the State of New York, County of New York promptly after the filing

of this Notice.

8. Attached to this Notice, and by reference made a part hereof, are true and correct copies of all process and pleadings filed herein.

9. By filing this Notice of Removal, Petitioner does not waive any defense which may be available to it, specifically including, but not limited to, its right to contest *in personam* jurisdiction over Petitioner, improper service of process and the absence of venue in this Court or the Court from which this action has been removed.

WHEREFORE, Petitioner prays that the above-captioned action now pending in the Supreme Court in the State of New York, County of New York, be removed therefrom to this Court.

Dated: Syosset, New York
June 18, 2007

SIMMONS, JANNACE & STAGG, L.L.P.

By: s/Sal F. DeLuca
SAL F. DeLUCA (sd-2354)

Attorneys for Defendant
BEST BUY STORES, L.P. s/h/a
BEST BUY CO., INC.
Office & P.O. Address
75 Jackson Avenue, Suite 100
Syosset, New York 11791-3139
(516) 357-8100

TO:

PAZER & EPSTEIN, P.C.
Attorneys for Plaintiff
DAVID SILBERSTEIN

Office & P.O. Address:

20 Vesey Street, 7th Floor
New York, New York 10007
(212) 227-1212

not.removal.bestbuy

CERTIFICATE OF SERVICE

RE: David Silberstein v. Best Buy Co., Inc.
Docket No.: 07 CV 5778
United States District Court, Southern District

STATE OF NEW YORK)
: ss.:
COUNTY OF NASSAU)

I, MARILYN C. AVONDET, certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that the service of this **CIVIL COVER SHEET and NOTICE OF REMOVAL** to all parties on June 19, 2007 by:

X Mail service: Regular first class United States mail, postage fully pre-paid, addressed to:

PAZER & EPSTEIN, P.C.
Attorneys for Plaintiff
DAVID SILBERSTEIN
Office & P.O. Address:
20 Vesey Street, 7th Floor
New York, New York 10007
(212) 227-1212

Under penalty of perjury, I declare that the foregoing is true and correct.

____s/Marilyn C. Avondet____
MARILYN C. AVONDET

Sworn to before me this
19th day of June, 2007

____s/Janet L. Corsie____ Exp. 11/15/09
NOTARY PUBLIC No. 01CO6033230 Nassau County